

RECEIVED

2012 OCT 31 PM 6:02



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CLERK
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
EPA REGION III, PHILA. PA

In the Matter of:

PDC Mountaineer, LLC
120 Genesis Boulevard
Bridgeport, West Virginia.26330

Respondent

Hudkins Well Pad
Latitude: 39.2000
Longitude: -80.3522
Harrison County, WV

D'Annunzio Well Pad
Latitude: 39.2549
Longitude: -80.3361
Harrison County, WV

Board of Education Gas Pipeline
Starting Point: Latitude 39.2551
Longitude: -80.3362
Termination Point: Latitude 39.2707
Longitude: -80.3990
Harrison County, WV

GEPCO Gas Pipeline
Starting Point: Latitude 39.2033
Longitude: -80.3523
Termination Point: Latitude 39.2492
Longitude: -80.3562
Harrison County, WV

Sites

Proceeding under Section 309(g)(2)(B)
of the Clean Water Act, 42 U.S.C. §
1319(g)(2)(B)

EPA Docket No. CWA-03-2012-0265

**CONSENT AGREEMENT &
FINAL ORDER**

I. STATUTORY AND REGULATORY AUTHORITY

1. This Consent Agreement and Final Order (jointly "CAFO") is entered into by

Director of the Environmental Assessment and Innovation Division ("EAID"), United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and PDC Mountaineer, LLC ("Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 42 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22 (the "Consolidated Rules").

2. The authority to settle this matter is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator for EPA Region III, who in turn has delegated this authority to the Director of the Environmental Assessment and Innovation Division.
3. The parties have agreed to settlement of violations of the CWA by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).
4. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Civil Monetary Inflation Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty in an amount not to exceed \$16,000 per day for each day of the violation, up to a total penalty of \$177,500.

II. FINDINGS OF FACT AND LAW

5. Respondent, PDC Mountaineer, LLC, is a corporation with a place of business at 120 Genesis Boulevard, Bridgeport, West Virginia 26330. The Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. At all times relevant to this CAFO, Respondent controlled the GEPCO pipeline, the Hudkins well pad which will be connected to the GEPCO Pipeline, and the D'Annunzio well pad, which will be connected to the Board of Education ("BOE") Pipeline. Both well pads and pipelines are located in Harrison County, West Virginia as further identified on the map attached hereto as "Exhibit A" (collectively "the Sites").
7. The Sites contain wetlands and tributaries to Nutter Run, Doll Run, Davisson Run, and the West Fork River. Nutter Run flows to Elk Creek and then to the West Fork River, a "traditionally navigable water." Doll Run and Davisson Run flow directly to the West Fork River. Therefore, the Sites contain "Waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2.
8. The Sites also contain wetlands and tributaries which run to Browns Run. Browns Run is a perennial tributary of the West Fork River, a "traditionally navigable water." The West Fork River is a tributary of the Monongahela River. Therefore, the Sites

contain "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2.

9. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any material which replaces portions of the "water of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.
10. Respondent began constructing the D'Annunzio well pad and access road on July 26, 2011. Respondent began constructing the Hudkins well pad on May 31, 2011. Commencing at various times during the construction, Respondent and/or people acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located at the Sites as described above. Respondent's activities include the construction of the BOE pipeline without permit coverage.
11. Respondent began constructing the GEPCO pipeline on September 14, 2011. Commencing at various times during the construction, Respondent and/or people acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located at the Sites as described above. Respondent's activities include the construction of the GEPCO pipeline without permit coverage.
12. The equipment referenced in Paragraphs 10 and 11 which discharged "fill material" to "waters of the United States" constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
13. EPA conducted two site inspections on December 11, 2011 and March 28, 2012. Additionally, EPA issued an information request pursuant to Section 308 of the CWA, 33 U.S.C. 1318. The inspections and the responses to the information request identified violations which resulted in three administrative compliance orders:
 - a. EPA Docket No. CWA-03-2012-0085DW: Issued February 2, 2012 addressing violations of the CWA at the D'Annunzio well pad and along the BOE pipeline;
 - b. EPA Docket No. CWA-03-2012-0187DW: Issued April 30, 2012 addressing CWA violations at the Hudkins well pad;
 - c. EPA Docket No. CWA-03-2012-0230DW: Issued August 23, 2012, addressing violations along the GEPCO Pipeline.
14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the discharge of dredged and/or fill material from a point source to waters of the United States except in compliance with a permit issued by the Secretary of the Army pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

15. At no time during the discharge of dredged and/or fill material to the waters of the United States located on the Sites did Respondent have a permit from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. § 1344.

III. CONCLUSIONS OF LAW

16. Respondent, by discharging dredged and/or fill material to the waters of the United States without authorization has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. CONSENT AGREEMENT AND FINAL ORDER

17. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
18. For the purposes of this proceeding Respondent:
- a. Admits the jurisdictional allegations contained in this consent agreement;
 - b. Neither admits nor denies the specific factual allegations contained in this consent agreement;
 - c. Consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action, to any conditions specified in this consent agreement;
 - d. Waives the right to the hearing contesting the allegations contained herein and waives the right to appeal the final order accompanying this consent agreement.
19. Each party to this action shall bear its own costs and attorney's fees.
20. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA provided public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. 40 C.F.R. § 22.45 requires a forty (40) day notice period in advance of an order which assesses a civil penalty.
21. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A). EPA consulted with the West Virginia Department of Environmental Protection regarding this action and will mail a copy of this document to the appropriate West Virginia official.

22. Based on the foregoing FINDINGS OF FACT, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, Respondents compliance with the Administrative Orders for Compliance referenced in Paragraph 13, the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. 1319(g)(2)(B), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS to pay a civil penalty in the amount of one hundred and seventy-seven thousand, five hundred dollars (\$177,500) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

V. PAYMENT TERMS

23. Respondent shall pay an administrative civil penalty of one hundred and seventy-seven thousand, five hundred dollars (\$177,500) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action: EPA Docket No. CWA-03-2012-0265;
 - b. All checks shall be made payable to "United States Treasury"
 - c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contacts: Craig Steffen (513) 487-2091
 - d. All payments made by check and sent by UPS, Federal Express, or overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jon Schmid (202) 874-7026 or REX: (866) 234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

- j. Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code: 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Zachary Moor
Mail Code: 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. GENERAL PROVISIONS

24. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.
25. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, including but not limited to Respondents' intent to comply with Administrative Orders for Compliance referenced in Paragraph 13. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO or the Administrative Orders for Compliance referenced in Paragraph 13. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
26. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:
- a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall

result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

- b. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
 - c. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge not to exceed six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
27. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
28. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
29. The penalty specified above represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
30. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

31. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
32. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.


VII. PUBLIC NOTICE AND EFFECTIVE DATE

33. Pursuant to 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45, this CAFO issued after the conclusion of a forty(40) day public notice period concluded. Pursuant to 40 C.F.R. § 22.45(c)(3), this CAFO will not be issued until ten (10) days after the close of the public comment notice period. This CAFO will become final and effective thirty (30) days after issuance, 33 U.S.C. § 1319(g)(5).

VIII. SIGNATURE

The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to legally bind the Respondent.

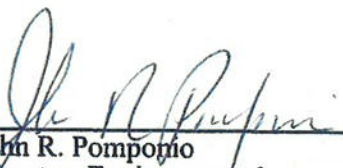
FOR RESPONDENT:



Mr. Dewey Gerdon
Chief Executive Officer
PDC Mountaineer, LLC

9/6/12
Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



John R. Pomponio
Director, Environmental Assessment and Innovation Division
U.S. Environmental Protection Agency, Region III

10/31/2012
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

PDC Mountaineer, LLC
120 Genesis Boulevard
Bridgeport, West Virginia 26330

Respondent

Hudkins Well Pad
Latitude: 39.2000
Longitude: -80.3522
Harrison County, WV

D'Annunzio Well Pad
Latitude: 39.2549
Longitude: -80.3361
Harrison County, WV

Board of Education Gas Pipeline
Starting Point: Latitude 39.2551
Longitude: -80.3362
Termination Point: Latitude 39.2707
Longitude: -80.3990
Harrison County, WV

GEPCO Gas Pipeline
Starting Point: Latitude 39.2033
Longitude: -80.3523
Termination Point: Latitude 39.2492
Longitude: 80.3562
Harrison County, WV

Sites

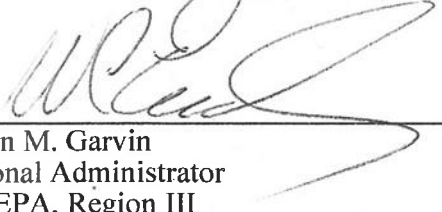
Proceeding under Section 309(g)(2)(B) of
the Clean Water Act, 42 U.S.C. §
1319(g)(2)(B)

EPA Docket No. CWA-03-2012-0265

FINAL ORDER

Complainant, the Director of the Environmental Assessment and Innovation Division, U.S. Environmental Protection Agency - Region III, and Respondent, PDC Mountaineer, LLC, have executed a document entitled "Consent Agreement and Final Order," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (The "Consolidated Rules"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, and the Consolidated Rules, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the Consent Agreement. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).

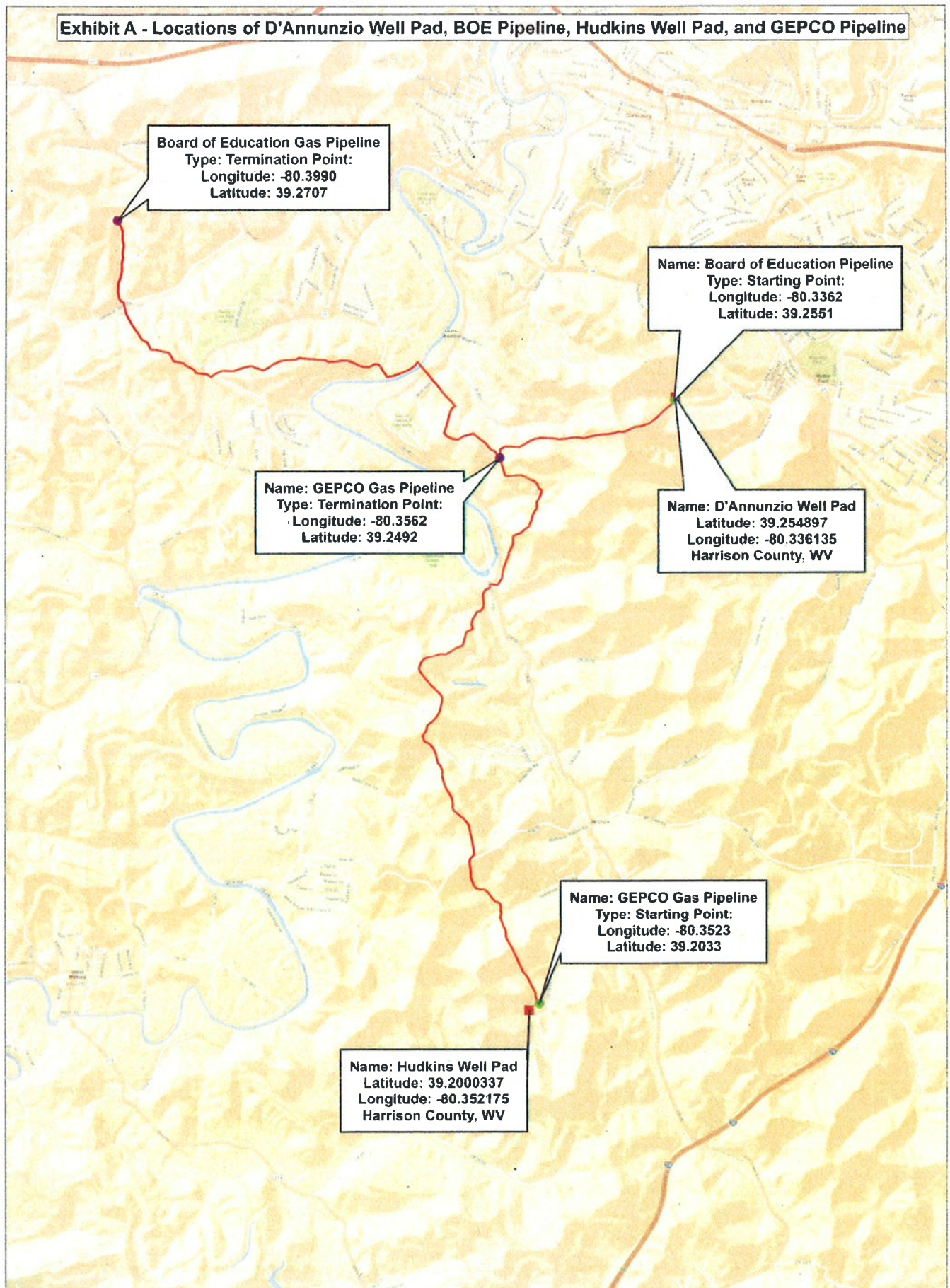


Shawn M. Garvin
Regional Administrator
U.S. EPA, Region III

10/31/12

Date

Exhibit A - Locations of D'Annunzio Well Pad, BOE Pipeline, Hudkins Well Pad, and GEPCO Pipeline



Date: September 7, 2012
Author: DCA

Points of Interest
TYPE
● Starting Point
● Termination Point
■ Well Pads
— Pipeline

0 0.5 1 2 3 4
Miles

1 inch = 1,300 feet



CERTIFICATE OF SERVICE

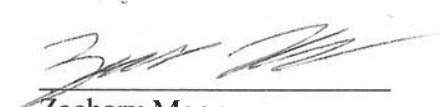
I hereby certify that on this date I caused to be sent the original of the attached Consent Agreement and Final Order, delivered by hand to:

The Regional Hearing Clerk, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

And with copies to the following at the addresses listed below via certified mail, return receipt requested:

Mr. W. Henry Lawrence, Esq.
Steptoe & Johnson
400 White Oaks Boulevard
Bridgeport, WV 26330

Date: 10/31/2012


Zachary Moor
Assistant Regional Counsel
U.S. EPA, Region III